THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.22928 OF 2005

AND

WRIT PETITION NO.23274 OF 2005

Dated: 16th March, 2006.

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Between :

Dr. Anil Kolly and others. … Petitioners

And

The State of Andhra Pradesh & others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.22928 OF 2005

AND

WRIT PETITION NO.23274 OF 2005

-

COMMON ORDER :

These two writ petitions which are based on the same set of facts and involve common questions of fact and law are heard together and decided by this common order.

The petitioners in both the writ petitions claim to be the members of the 4th respondent – Jubilee Hills Co-operative House Building Society Limited (for short, 'the Society'). The two writ petitions are filed aggrieved by the action of the 3rd respondent - Election Officer and the 2nd respondent – Registrar of Co-operative Societies in making ineligible for voting more than 2,500 members of the society, including the petitioners, in the election to the managing committee of the society.

The petitioners in W.P.No.22928 of 2005 sought a Writ of Mandamus declaring the Election Notice, dated 19-10-2005 issued by the 3rd respondent – Election Officer and the further proceedings taken as arbitrary and illegal.

In W.P.No.23274 of 2005 the petitioners whose nominations were rejected allegedly on the ground that they are disqualified and not eligible to vote, seek a Writ of Mandamus declaring the action of the respondents 2 and 3 in rejecting their nominations and all further proceedings as arbitrary and illegal.

The averments in the affidavits filed in support of the writ petitions, which are similar, in brief, are as under :

The 4th respondent Society is a society registered under the A.P. Co-operative Societies Act, 1964 (for short, 'the Act'). The election to the Managing Committee of the said society was declared to be held on 29-10-2005. The election schedule issued by the Registrar of Co-operative Societies was as follows :

Sl.No.	Description	Dates of Schedule

1.	Appointment of Election Officer by Election Authority	13-10-2005
2.	Requisition by Election Officer for production of records	14-10-2005
3.	Preparation of list of eligible members to vote by CEO	15-10-2005
4.	Handing over the voters list to the Election Officer by CEO and Scrutiny of Voters List by Election Officer	18-10-2005
5.	Issue of election notice and publication of voters list by Election Officer	19-10-2005
6.	Receipt of nominations	21-10-2005
7.	Scrutiny of nominations	22-10-2005
8.	Withdrawal of Nominations & Publication of valid nominations	23-10-2005
9.	Date of poll	29-10-2005
10.	Date of counting	Soon after the completion of polling
11.	Date of declaration of results	Soon after the completion of counting
12.	Conduct of Elections to the Office Bearers	30-10-2005

The petitioners state that the share capital of the members of the society was increased from Rs.100/- to Rs.300/-, but the members were not given any notice nor intimated about the payment of the deficit share capital of Rs.200/-. It is alleged that a big fraud was played on the members of the society by the Registrar of Co-operative Societies as well as the Election Officer and contrary to the election schedule, the Chief Election Officer having accepted a lumpsum amount of Rs.2,10,000/- on 17-10-2005 from a single member towards the share capital of 1,400 members made ready the list of eligible voters with about 2,500 members on 18-10-2005. The said list was published on 19-10-2005. Though the petitioners herein paid the difference of share capital on 18th & 19th of October, 2005, and submitted their nominations on 21-10-2005, their nominations were rejected on the ground that they are not eligible. After the finalisation of the valid nominations, some persons were made to withdraw and 15 persons remained in fray as per the final list of valid nominations published. Accordingly, the Election Officer declared them elected unanimously.

Alleging that the abovesaid action of the respondents 2 and 3 is contrary to the election schedule, W.P.No.22928 of 2005 was filed on 24-10-2005 and by order dated 28-10-2005 in W.P.M.P.Nos.29374 and 29375 of 2005 this Court ordered that the elections may go on as per the election schedule, but the same shall be subject to the result of the writ petition. The other writ petition i.e., W.P.No.23274 of 2005 was filed on 27-10-2005.

All the respondents entered appearance and filed counter-affidavits raising a preliminary objection as to the maintainability of the writ petitions contending that since the petitioners are challenging the preparation of voters list which forms part of election process, the writ petitions are not maintainable, but the proper remedy is to raise an election dispute under Section 61 of the Act.

In view of the above objection raised by the respondents as to the very maintainability of the writ petitions which goes to the root of the case, without going into the merits of the case, at the first instance I have heard the learned Counsel for both the parties with regard to the maintainability of the writ petitions.

Sri S. Ramachandra Rao, the learned Senior Counsel appearing for the petitioners contended that the non-exhaustion of alternative remedy available under the statute does not affect the jurisdiction of this Court to issue a writ. The learned Counsel submits that in case this Court is satisfied that the justice of the case requires the issuance of the writ, it has ample power to issue appropriate writ or direction as the particular facts and circumstances of the case warrant.

The learned Senior Counsel vehemently contended that the defects in preparation of the electoral rolls as pointed out by the petitioners are very serious and the election held on such imperfect electoral rolls is void and nonest and therefore availability of an alternative remedy is not a bar to exercise the jurisdiction of this Court under Article 226 of the Constitution of India. In support of his submissions, the learned Senior Counsel placed reliance upon the decisions in CHIEF COMMR., AJMEER v. RADHEY SHYAM, BAR COUNCIL OF DELHI v. SURJEET SINGH, R. VENUGOPAL v. DT. COLLECTOR and M.NARASAIAH v. K.BASAPPA.

On the other hand, the learned Senior Counsel Sri D. Prakash Reddy appearing for the society while leading the arguments on behalf of all the respondents contended that the ratio laid down in the cases cited by the learned Counsel for the petitioners does not apply to the facts of the present case. The

learned Counsel while relying upon the decision of the Supreme Court in SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAK SANSTHA v. STATE OF MAHARASHTRA and a latest decision of this Court in PRATHIPATI BHAGYAMMA v. ELECTION OFFICER, MPA CO-OPERATIVE SOCIETY, GUNTUR submitted that even the allegation with regard to the defects in preparation of the electoral roll is a question to be decided only by an Election Tribunal under Section 61 (3) of the Act.

Sub-sections (3) and (4) of Section 61 of the A.P. Co-operative Societies Act, 1964 (for short, 'the Act') may be extracted hereunder :

> *"**61. Disputes which may be referred to the Registrar** :-*
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> *(1) … … … … … ….*
>
> *(2) … … … … … ….*
>
> *(3) Every dispute relating to, or in connection with, any election to a committee of a society shall be referred for decision to the Tribunal having jurisdiction over the place where the main office of the society is situated, whose decision thereon shall be final.*
>
> *(4) Every dispute relating to, or in connection with any election shall be referred under sub-section (3) only after the date of declaration of the result of such election."*

On a perusal of the above provisions, it is clear that every dispute relating to or in connection with any election to a committee of a society shall be referred to a decision to the Tribunal as constituted under Section 75 of the Act. The dispute, if any, with regard to the preparation of voters list as well as the rejection of nominations, being disputes relating to the election, undoubtedly come under Sub-section (3) of Section 61 of the Act.

The Supreme Court having considered an identical issue arising under Maharashtra Co-operative Societies Act, 1960 and the Rules made thereunder in SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAK SANSTHA'S case (5 supra) held as under :

> *"Once the statute provides that the preparation of the voters' list shall be*

part of the election process, there is no reason to hold that the preparation of the electoral roll is not an intermediate stage in the process of the election of a specified Society. This matter can be examined from another angle. A perusal of the Rules discloses that the preparation of provisional list of voters, filing of objection against the provisional list of voters, consideration of the objection by the Collector and finalising the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of specified societies are complete code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters list, decision on the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of result of the election. In view of the scheme of the Act and Rules, the preparation of voters' list must be held to be part of the election process of constituting Managing Committee of a specified Society."

Following the above principles of law laid down by the Supreme Court, this Court in PRATHIPATI BHAGYAMMA'S case (6 supra) while dealing with the provisions under the A.P. Co-operative Societies Act, 1964 i.e., Section 61 of the Act and Rule 22 of the A.P. Co-operative Societies Rules, 1964, observed as under :

"Rule 22 (1) as amended deals with conduct of elections to the co-operative societies. It encompasses the appointment of Election Authority, Election Officer, issue of notice by the Election Officer, preparation of voters' list by the President / Chief Executive Officer of the State, calling / scrutiny / withdrawal / publication of nominations, voting and declaration of result. Therefore, the rejection of nomination or improper acceptance of nomination cannot be challenged in a writ petition, under Article 226 of the Constitution of India."

In the above decision, this Court having relied upon the decision of the Supreme Court in SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAK SANSTHA'S case (5 supra), C. SUBRAHMANYAM v. K.RAMANJANEYULU and M.J. VEERAMANI v. GOVERNMENT OF A.P. rejected the further contention of the petitioners therein that when the nomination is rejected in gross contravention of the rules and regulations in an arbitrary manner, a writ petition would lie.

On a reading of the above decisions, it is clear that even the allegation as to

the non-compliance of a statutory provision is a ground for an election petition, but the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked. It is also relevant to note that in SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAK SANSTHA'S case (5 supra), the Supreme Court while holding that the preparation of the electoral roll is an intermediate stage in the process of election for constituting the managing committee of a specified society, did not agree with the contention of the appellants therein that the Election Tribunal has no power to go behind the preparation of the electoral roll and therefore the writ petition is maintainable.

It is true that in SURJEET SINGH'S case (2 supra) cited by the learned Senior Counsel for the petitioners, it was held that a writ petition under Article 226 of the Constitution of India should not be rejected on account of availability of an alternative remedy by way of election petition where the challenge is not a ground under the Act or the Rules and where the validity of a rule is challenged being ultra vires and invalid. However, in the case on hand, the validity of any of the provisions of the Act or Rules is not under challenge. Hence, the said decision is of no assistance. The above said decision i.e, SURJEET SINGH'S case (2 supra) was considered in SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAK SANSTHA'S case (5 supra) and was distinguished for the same reasons.

For the aforesaid reasons, I am of the opinion that the allegations made by the petitioners that their nominations were rejected illegally and that a fraud has taken place in preparation of the list of eligible voters are all disputes relating to the election to the managing committee of the 4th respondent society and therefore the proper remedy is to raise a dispute before the Election Tribunal as provided under Section 61 (3) of the Act. Without exhausting the said alternative remedy available under the statute, the petitioners cannot maintain these writ petitions.

Accordingly, the preliminary objection raised by the respondents is upheld

and without expressing any opinion on merits, both the Writ Petitions are dismissed as not maintainable. No costs.

However, the petitioners are granted liberty to challenge the election before the competent Tribunal following due process of law.

G. ROHINI, J.

Dt. 16–03-2006.

gbs

N.B:- Office is directed to place a copy

of this common order in W.P.No.23274 of

2005 after signatures of the Hon'ble Judge.

(B/O)

gbs